

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

**In the Matter of
The Ad Hoc Coalition of International
Telecommunications Companies' Petition
For Declaratory Ruling Regarding
Universal Service Fund Contributions**

REPLY COMMENTS OF AMERICATEL CORPORATION

Robert Felgar, General Counsel
Americatel Corporation
7361 Calhoun Place
Rockville, MD 20855
(301) 610-4646 (Tel)
(240) 314-4219 (Fax)
rfelgar@americatel.com

Dated: June 22, 2009

I. Introduction

Americatel Corporation (“Americatel”) submits the following reply comments in response to comments filed by parties in support of the Petition of the Ad Hoc Coalition of International Telecommunications Companies (“Coalition”) for Declaratory Ruling (WC Docket No. 06-122) (“Petition”). The Petition requests that the Federal Communications Commission (“Commission”) issue a declaratory ruling that *de minimis* universal service fund contributors may choose either: (a) to have their underlying carrier pass through universal service fund surcharges; or (b) to pay universal service contributions directly. This request should be rejected.

Americatel is a facilities-based long distance carrier focused on providing international long distance service to ethnic Americans via its direct-dial and dial-around services. Americatel sells its services via two brands: Americatel and Startec. Between the two brands, more than one million Americans use our services each year.

II. Allowing *de minimis* Carriers that Qualify for the LIRE to Pay Universal Service Fund Contributions Directly Would Further Distort Competition

In its comments, Ambess Enterprises, Inc. (“Ambess”) argues that carriers that qualify for the LIRE and are also *de minimis* should be provided the option of opting out of *de minimis* status. Ambess alleges that this option is necessary because the “application of the LIRE in conjunction with the *de minimis* exemption places companies that rely on underlying suppliers for the provision of telecommunications services at a significant competitive disadvantage.” Ambess Comments at 10. In support of this argument, Ambess repeats the claim made by the Ad Hoc Coalition that if a LIRE-eligible company also meets the *de minimis* standard “the wholesale supplier may assess

USF fees upon the company's *entire revenue* base, including both interstate and international revenue." *Id.* (emphasis added). This claim, however, is incorrect.

A. Wholesale Suppliers Do Not Assess USF Fees On a Carrier's Entire Revenue

Both Ambess and the Coalition argue that carriers should be allowed to opt out of *de minimis* status because without such opt out carriers that qualify for the LIRE will contribute indirectly to the Universal Service Fund based upon those carriers entire revenue base causing them to contribute the same amount as had they not qualified for the LIRE in the first place. Simple illustrations, however, show that this is false.

The Coalition provides an example in which carrier C has \$75,000 in interstate telecommunications revenue and \$10,000,000 in international revenue. The Coalition properly notes that carrier C qualifies for the LIRE. As a result, carrier C must contribute only on the basis of its interstate revenue. Assuming a contribution factor of ten percent, carrier C must contribute \$7,500. However, carrier C is *de minimis* and therefore is not required to contribute at all. As a result, carrier C's underlying carrier, carrier D, is likely to pass through USF to carrier C. The Coalition then states that "carrier D's contribution base includes the ENTIRETY of carrier C's interstate and international end user revenue pool." *See* Petition at 8. Therefore, carrier C will have an indirect USF liability of 10 percent of \$10,075,000 or \$1,007,500.

The Coalition's analysis, however, is flawed. Carrier D's contribution base will not be equal to carrier C's interstate plus international revenue. Rather, it will be equal to the amount that carrier C pays carrier D for wholesale services, which will be substantially less than carrier C's revenue. For example, let us assume that carrier C's cost of origination equals ten percent of its revenue, and that its cost of terminating traffic

equals approximately forty five percent of its revenue.¹ Further, let us assume that carrier C uses carrier D, a carrier licensed in the U.S., to provide both origination and termination. Under this scenario, carrier D's contribution base attributable to carrier C will be \$5,541,250 ($.55 \times \$10,075,000$); carrier C will have an indirect USF liability of 10 percent of \$5,541,250, or \$554,125. Thus, under these assumed facts, the Coalition has exaggerated carrier C's true indirect USF obligation by almost 100 percent.

Now assume that carrier C uses carrier D for domestic origination but uses carrier E, an international carrier, for international termination. Because carrier E is not a U.S. carrier, it will not pass through USF to carrier C. Thus, carrier C would have to pay USF indirectly only on its cost of domestic origination. Under this scenario, carrier D's contribution base attributable to carrier C will be \$1,007,500 ($.10 \times \$10,075,000$); carrier C will have an indirect USF liability of 10 percent of \$1,000,007.5, or \$100,000.75. In order to minimize its indirect contribution to the Fund, carrier C will have an incentive to use international carriers for international termination service, thus making this scenario very likely. These figures make it apparent that Ambess and the Coalition hugely exaggerate the impact of the current framework on the indirect USF obligations of carriers that qualify for the LIRE and who are also *de minimis*.

Furthermore, when Ambess and the Coalition claim that the current framework places them at a competitive disadvantage, one has to ask compared to whom? They are certainly not at a competitive disadvantage to Americatel, which does not qualify for the LIRE, but whose primary market is international long distance. More than ninety percent of Americatel's revenue is international. Yet Americatel does not qualify for the LIRE

¹ The cost of terminating international calls is substantially greater than the cost of originating calls domestically.

because it is owned by Platinum Equity LLC (“Platinum”), a private equity firm that owns a separate telecommunications carrier called Matrix, Inc. which generates substantial interstate revenue.² Prior to its acquisition by Platinum Equity, Americatel qualified for the LIRE.

Permitting Ambess, and similarly situated carriers, to opt out of their *de minimis* status would increase the competitive advantage that Ambess has over Americatel. Accordingly, far from leveling the playing field, adopting an opt-out option would be discriminatory.

B. Reducing the Incentive to Cheat is Not a Reason for a Policy Change

The Coalition asserts that the “current system incentivizes contributors that are both LIRE-qualified, yet remain *de minimis* to. . . over-report their retail interstate revenues in Form 499-Qs to avoid exorbitant USF pass-through surcharges from their suppliers.” *See* Petition at 9. However, as discussed above, Ambess and the Coalition have significantly exaggerated the USF pass-through charges experienced by such contributors, and therefore the incentive to over report.

In addition, even if the incentive to over report was significant, that is not a reason to change the contribution system. When Americatel was acquired by Platinum, it had a significant incentive to hide the fact that Platinum also owned Matrix. If Americatel had not informed the Universal Service Administrative Company (“USAC”) of the fact that Americatel and Matrix were both ultimately owned by Platinum, Americatel would have continued to be invoiced by USAC on only its interstate revenue. Despite the incentive, however, Americatel complied with the Commission’s rules.

² Under Commission regulations, the Commission considers Matrix, Inc.’s revenue to determine whether Americatel qualifies for the LIRE.

III. CONCLUSION

For the foregoing reasons, the Commission should reject the Coalition's request that the Commission allow universal service fund contributors to opt-out of *de minimis* status.

Dated: June 22, 2009

Respectfully submitted,

A handwritten signature in cursive script, reading "Robert Felgar", written over a horizontal line.

Robert N. Felgar
General Counsel
Americatel Corporation
7361 Calhoun Place, Suite 650
Rockville, MD 20855
(301) 610-4646